IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 8960 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL BACHUBHAI TRIBHUVANDAS
Versus
VAGHELA TAKHATSING JAVANJI AND OTHERS

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Appearance :
MR KIRIT I PATEL for Applicant.
MR NK MAJMUDAR for Respondent Nos.1 - 2.
MR DIPEN DESAI, APP for Respondent No.3.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 12/09/2007

ORAL JUDGMENT

1. The petitioner, original complainant, aged about 65 years, has approached this Court under the provisions of Section 439 of the Code of Criminal Procedure (for short "Cr.P.C.") to challenge order dated 28-6-2007 of learned Sessions Judge, Patan in Criminal Misc. Application

No.259/2007, whereby respondent nos.1 and 2 were ordered to be released on bail. According to the petitioner and FIR dated 6-6-2007, registered as C.R.No.I-90/2007 in Sami Police Station of Patan District, the complainant was standing at the bus stop at 8 a.m., when respondent nos.1 and 2 came with dharia and stick and inflicted blows upon him. Respondent no.1 was alleged to have inflicted the blow of dharia on the head of the complainant, who tried to avoid it by raising his hand and thus, sustained injuries on the head as well as fingers. Respondent no.2 was alleged to have inflicted injuries by stick on both legs and back of the complainant, while two other accused were also alleged to have beaten the complainant. Then respondent no.1 went to his home and returned with the gun but due to intervention of others, the complainant was saved and taken to Civil Hospital at Patan. He is stated to have been hospitalized for three weeks.

2. According to the affidavit of respondent no.1, submitted on behalf of respondent no.1 and 2, he is the elected President of Kukrana Doodh Utpadak Mandali, who had insisted that a rival or parallel milk producing cooperative society should not come up in the same village and had taken legal proceedings for that purpose in the Court of Registrar's Board of Nominees. There was no dispute about the fact that the complainant wanted to establish another cooperative society and due to friction between two communities, at the instance of one police inspector the complaint had been filed, according to the affidavit. It is also averred that, according to medical certificate dated 16-6-2007, injuries were simple and could not have proved to be fatal. It is admitted that the medical certificate dated 16-6-2007 was perused by the Court while releasing the respondent on bail and at that time the victim was already discharged from the hospital and was absolutely out of danger, after fully recovering from his injuries. Therefore, the Court

had rightly exercised its discretion, according to the submission. Respondent no.1 has, in his affidavit, also made allegations against police alleging that when he voluntarily approached police Sub Inspector on 24-6-2007 in connection with the offences, he was unnecessarily taken to Harij and roped, handcuffed and paraded in public.

3. Learned APP submitted that the all important medical certificate dated 16-6-2007, annexure-C to the petition, was obviously misread by the Sessions Court insofar as it enumerated eight injuries on the body of the complainant out of which injuries at serial nos.2, 3 and 4 were certified to be grievous and injury at serial no.1, i.e., incised wound over right frontal region, 4 cm. X 0.5 cm., bone deep, was likely to be due to sharp cutting object. According to that certificate, the complainant was admitted into the hospital as an indoor patient on 6-6-2007 and referred to Civil Hospital, Ahmedabad, on 15-6-2007. It was also submitted that respondent nos.1 and 2 could not be arrested immediately after registration of FIR on 6-6-2007 on account of their non-availability, according to the papers of investigation. Learned APP also submitted that, by now, the charge-sheet was filed against the respondent and the offences alleged against the accused persons were punishable under Sections 307, 323, 405 and 34 of the Indian Penal Code.

4. Learned counsel, Mr.K.I.Patel, appearing for the petitioner, vehemently argued that the respondents had in a very high handed and planned manner attacked the complainant and the obvious intention was to kill the complainant on the spot. He also pointed out that the respondent had gone underground and the police was either unwilling or unable to arrest them till the complainant was believed to be out of danger. Those facts indicated the influence wielded by the respondent and the danger posed to the complainant and the witnesses as also

proper investigation of the offences. He, on that basis, submitted that neither the impugned order was illegal and justified nor the complainant or witnesses be saved, if the respondents were at large.

5. Learned counsel, Mr.N.K.Majmudar, relying upon the judgment of the Supreme Court in **Bhausaheb Nagu Dhavare v. State of Maharashtra & Another [2001 (3) Crimes 410]** submitted that even in case of the accused found to have been involved in offence under Section 307 of the Indian Penal Code, the Supreme Court was pleased to order release of the accused on bail under stricter conditions. He further submitted that since the complainant was, by now, admittedly out of danger and the investigation was completed, the impugned order may not be set aside.

6. Perusing the impugned order, it is clear that the Sessions Court was apprised of the allegations and injuries inflicted upon the complainant as also of the movement of the complainant from one hospital to the other. However, after a clear misreading of that material, the Court appears to have come to a perverse conclusion that no grievous hurt was revealed and even the injury allegedly inflicted on the head by sharp cutting object had not resulted into fracture. It was clearly perverse and against the weight of the material placed before the Court to conclude that no grievous hurt was inflicted upon the complainant. It was equally premature and perverse for the Court to conclude in the impugned order that *prima facie* attack on the complainant was not calculated to kill him. Consequently, it was also perverse to record that *prima facie* the case of offence punishable under Section 307 was not made out. Surprisingly, the only conditions imposed in the impugned order were to mark presence, twice a month in the police station, and not to enter Kukrana village till the victim was released from the hospital

and returned to Kukrana village. Even the usual conditions of not tampering with the evidence, surrendering the passport or otherwise restricting the movement of the accused persons in such cases are conspicuous by their absence in the impugned order. Therefore, there is no manner of doubt about the impugned order being illegal, improper, perverse and bereft of judicious application of mind.

7. Examining the impugned order in larger context of genesis of the dispute, the way the complainant was alleged to have been attacked in a planned manner with weapons and the way the respondent claimed to have surrendered to the police station after about 18 days without the police being successful in arresting them and the way the respondents were released on bail, even without appropriate conditions, within two days of their arrest, while the complainant was not discharged from the hospital, indicate some kind of collusion and manipulation at the instance of the accused persons. If the investigating agency were so helpless and the persons accused of serious offences could remain at large immediately after the offence, as also immediately after being arrested, the efficacy of the criminal justice system could be seriously doubted and respect for the rule of law could be completely eroded. As held by the Supreme Court in **Puran etc. etc. v. Rambilas & Another etc. etc. [JT 2001 (5) SC 226]**, one ground for cancellation of bail would be where ignoring material and evidence on record, a perverse order granting bail is passed in a case of heinous crime. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. An arbitrary and wrong exercise of discretion by the trial Court has to be corrected.

8. Therefore, in view of the impugned order having been found to be perverse and illegal and since the discretion appears to have been exercised therein without judicious application of mind, it has to be set aside. Accordingly, it is set aside and respondent nos.1 and 2 are directed to surrender before Sami Police Station on or before 14th September, 2007. It is, however, clarified that the observations made herein are for examining the merits of the impugned order and decide as to whether bail was required to be cancelled. Therefore, they shall not influence consideration of the material and evidence, that may be produced at the time of trial.

9. Rule is made absolute accordingly with no order as to costs. A copy of this order shall be placed before Honourable the Chief Justice for such action on the administrative side as may be deemed proper.

(D.H.Waghela, J.)

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